

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
AT MOBILE**

JAMES L. FIKES

Plaintiff

vs.

**WAL-MART, INC. and John Does,
inconclusive, who may intervene**

Defendant.

Case No. CV-07-339

COMPLAINT

Comes the Plaintiff, James L. Fikes, by counsel and brings this cause of action against the Defendant, Wal-Mart, Inc. , more commonly known as Wal-Mart stores, a corporation authorized to do business in the Southern District of Alabama, and any other John Doe, who may intervene.

I

That the Plaintiff, pursuant to 42 USC § § 12101 et seq. more commonly known as the Americans with Disabilities Act, Title I: Employment , asserts that he has been denied an equal opportunity to benefit from the full range of employment - related opportunities available to others, as an employee of the Defendant.

II

Plaintiff submits that he is an individual with a physical disability that substantially limits one

or more major activities of his life and that there is a record of such impairment, and that he is regarded by the Defendant and others as having such an impairment.

III

Plaintiff also submits that he is a qualified individual with a disability, who asserts that he could and can perform the essential functions of the employment positions that he had heretofore sought.

IV

Plaintiff further submits that he has been the victim of discrimination by the Defendant such that his opportunity for advancement was and has been denied on the account of his disability.

V

Plaintiff in addition to the above noted assertions submits that during the time he sought advancements with the Defendant, that he endured such disparate treatment which created for him a hostile work environment all of which stemmed from his intentions and efforts to make advancements and improve his employment status with the Defendant.

VI

Plaintiff subsequently filed with the EEOC a charge of discrimination asserting violation of Title I of the Americans with Disabilities Act on, November 21, 2006, and on March 22, 2007, the EEOC issued to the Plaintiff a Right-to-Sue letter. (Letter attached as Exhibit "A")

VII

Plaintiff submits that because Defendant intentionally discriminated against him on account of his disability, Defendant engaged in conduct creating the hostile work environment.

PREMISES CONSIDERED PLAINTIFF PRAYS:

1. That process issue and the complaint be served upon Defendant pursuant to the Federal Rules of Civil Procedure
2. That the Defendant be liable for punitive damages for the intentional conduct of discrimination and the creation of a hostile work environment in the amount of \$2,000,000.00.
3. That the Defendant be liable for damages for discrimination on account of Plaintiff's disability upon findings of the violation of the Americans with Disabilities Act, in the amount of \$1,000,000.00.
4. That the Defendant be found liable for Plaintiff's attorney fees, expert witness fees and court costs.
5. That a jury be impaneled to decide the issues that may be presented to them.
6. For such other and further general relief as the Court may find appropriate.

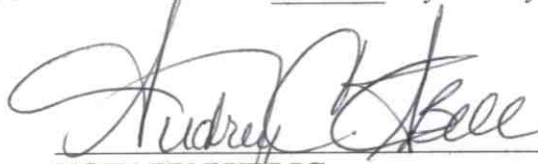
STATE OF ALABAMA
COUNTY OF

Personally appeared before me, the undersigned Notary Public in and for the State and County aforesaid, **JAMES L. FIKES**, with whom I am personally acquainted and who made oath that the facts contained in the foregoing Complaint are true and correct to the best of his personal knowledge, information and belief, and that the Complaint is not made out of levity or by collusion with the Defendant, but in sincerity and truth for the causes mentioned in this Complaint.



JAMES L. FIKES

Sworn to and subscribed before me on this the 14th day of May, 2007.



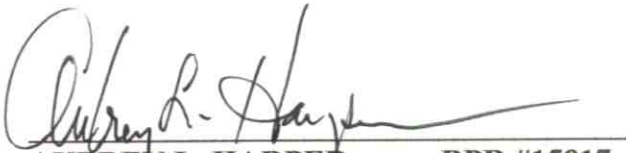
NOTARY PUBLIC

MY COMMISSION EXPIRES:

My Commission Expires August 28, 2007



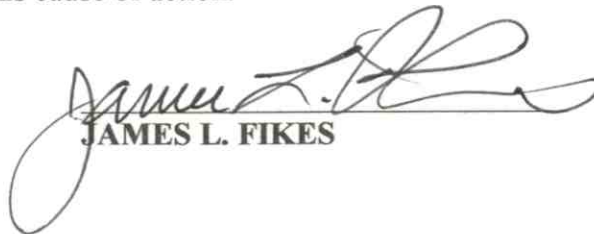
RESPECTFULLY SUBMITTED:



AUBREY L. HARPER, BPR #15817
Attorney for Plaintiff (pending pro hac vice)
112 College Street
Post Office Box 588
McMinnville, Tennessee 37111-0588
(931) 473-8600

COST BOND

The undersigned hereby acknowledge surety for costs in this action in the event that he is unsuccessful in his efforts in bringing this cause of action.



JAMES L. FIKES

DISMISSAL AND NOTICE OF RIGHTS

To:

James Fikes
477 Scott Drive North
Saraland, Alabama 36571

From:

Mobile Local Office
63 South Royal Street
Suite 504
Mobile, Alabama 36602

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

425-2007-00270

Erika LaCour, Director

(251) 690-3001

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☐

Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

☐

While reasonable efforts were made to locate you, we were not able to do so.

☐

You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission


Erika LaCour, Director

3-22-2007

(Date Mailed)

Enclosure(s)

CC: Aubrey Harper, Esq.
P.O. Box 588
McMinnville, Tennessee 37111-0588

Wal-Mart Stores East, LP
c/o Joanne Rinardo, Esq.
755 Magazine Street
New Orleans, Louisiana 70130